

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA**

<b>ELIZABETH SINES ET AL.</b>	:	Case No. 3:17-CV-00072
	:	
Plaintiffs,	:	(Judge MOON)
	:	(Magistrate Judge HOPPE)
v.	:	
	:	
<b>JASON KESSLER ET AL.</b>	:	<b><u>DEFENDANTS' SUPPLEMENTAL</u></b>
	:	<b><u>PLEADING IN SUPPORT OF ECF</u></b>
Defendants.	:	<b><u>1522</u></b>
	:	
	:	

Defendants Damigo, Identity Evropa, and Kessler (“Defendants”) file the following supplemental authority in support of their post-trial motions filed at ECF 1522.

**I. Additional precedent as to remittitur of punitive damages**

a. Federal Law

The Ninth Circuit case referenced by defendants in their initial motion was Arizona v. Asarco LLC, 733 F.3d 882 (9<sup>th</sup> Cir. 2013). The plaintiff in Arizona suffered substantial harassment at her job. In ordering remittitur, the Ninth Circuit identified multiple federal cases dealing with constitutionally excessive punitive damages ratios. Id. at 891.

In addition to the problem with excessive ratios, the defendants observe that an employment law case is substantially different from this Charlottesville case. Specifically, whatever personal compunction the various plaintiffs felt necessitated their presence on August 11 or 12<sup>th</sup> 2017, it is hardly the same level of “requirement” as an employee who is required to attend her job. For that reason, the above federal precedent provides even more

reason to order remittitur below any legally mandated caps and consistent with federal due process limits on punitive damages ratios.

b. Virginia Law

The state law case referenced by defendants in their initial motion was Wilkins v. Peninsula Motor Cars, 59 Va. Cir. 329. The case contains a useful review of Virginia law on punitive damages as well as approval of a punitive to compensatory/nominal ratio of 53 to 1. Id. at 338.

As other defendants have noted, Virginia law contains a cap on punitive damages at Virginia Code § 8.01-38.1 of \$350,000. Importantly, that cap is the total punitive damages available for the case, it is not available per claim or per party. Al-Abood v. El-Shamari, 217 F. 3d 225, 236-238. (4<sup>th</sup> Cir. 2000), *see also* Foster v. Wintergreen Real Estate Co., 81 Va. Cir. 353, 363-364. (2010).

Additionally, it appears that Virginia courts are permitted to divvy up the available punitive damages with different amounts awarded to various defendants in such manner as the Court finds reasonable provided the punitives awarded do not exceed the statutory cap. Egan v. Butler 290 Va. 62, 68-70. (2015).

Respectfully Submitted,

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Identity Evropa*

**CERTIFICATE OF SERVICE**

I certify the above was served on MARCH 9, 2022 on all ECF participants and that parties requiring service by other means were served as follows:

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